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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,845	11/13/2001	Allan T. Koshiol	279.196US2	8510

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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,845

Applicant(s)

KOSHIOL ET AL.

Examiner

George R Evanisko

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-33 and 35-43 is/are pending in the application.
- 4a) Of the above claim(s) 33 and 35-41 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22, 24, 25, 31, 42, 43 is/are allowed.
- 6) ☒ Claim(s) 23, 26-30 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 33 and 35-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/24/03.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 26-28, 30, and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The subject matter not described in the original specification are the different ways, in the dependent claims, to detect an "error in a change" in the first state of the at least one programmable parameter to a second state, such as detecting an expiration of energy, use of a magnetic signal, etc. The original specification on page 10, lines 8-21 discusses logging when the reset program is executed and detecting an error when parameter values and/or states are not within acceptable ranges, but does not state that it is used with the different ways to detect an error. This rejection is related to new matter.

Art Unit: 3762

Claims 23, 26-30, and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not contain any description of how the dependent claims detect an error in change of the programmable parameters from a first state to a second state. For example, claims 27 and 30 state an error in change includes detecting expiration of battery energy or use of a magnetic signal to control operation. It is unclear how you detect an error in change of a magnetic signal that was not accidentally used but purposely used to control operation, or how the expiration of battery energy is an error in change. The state of the prior art, the level of one of ordinary skill, and/or the level of predictability in the art do not provide any knowledge or teaching on how to detect an error in change in a first state of a programmable parameter to a second state for those claims. This rejection is related to enablement.

Allowable Subject Matter

Claims 22, 24, 25, 31, 42, and 43 are allowed.

Response to Arguments

Applicant's arguments filed 4/13/05 have been fully considered but they are not persuasive. The Examiner recognizes that the applicant's system logs the first state of parameters when they are changed from the first state to a second state. In addition, the Examiner recognizes that the original disclosure discussed the detection of an error in a change in the first state of a parameter. But the new matter rejection is related to the fact that the ORIGINAL disclosure did not discuss the detecting of "an error in a change" of a programmable

Art Unit: 3762

parameter when it is related to expiration of energy, termination of the executable program, or use of a magnetic signal, etc. of claims 26-28, 30, and 32. The original disclosure discussed the use of a magnetic signal, etc. but did not discuss it being an “error in a change” of a programmable parameter. In addition, the enablement rejection is related to the fact that nowhere is the specification is discussed how a detection of an error in a change of those programmable parameters, of claims 23, 26-30, and 32, is accomplished. As stated in the last office action, “for example, claims 27 and 30 state an error in change includes detecting expiration of battery energy or use of a magnetic signal to control operation. It is unclear how you detect an error in change of a magnetic signal that was not accidentally used but purposely used to control operation, or how the expiration of battery energy is an error in change. The state of the prior art, the level of one of ordinary skill, and/or the level of predictability in the art do not provide any knowledge or teaching on how to detect an error in change in a first state of a programmable parameter to a second state for those claims”. Finally, claims 33 and 35-41 are still withdrawn due to an election by original presentation as being drawn to a different embodiment and/or method versus apparatus claims. The claims do not say that the “first state of the at least one programmable parameter changed in error to the second state” is being stored. Since claims 22 and 42 have been indicated as allowable, the above insertion in an after final amendment will not result in an advisory action as long as all the other issues are resolved.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3762

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GRE
May 19, 2005

GEORGE R. EVANISKO
PRIMARY EXAMINER

5/11/5